



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 98

#### Request for Information: Meeting the Child Care Needs in Tribal Nations

**AGENCY:** Office of Child Care (OCC), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Request for information.

**SUMMARY:** The Office of Child Care invites public comment on the rules and regulations of the Tribally administered Child Care and Development Fund (CCDF) program as part of the Administration for Children and Families' (ACF) commitment to creating partnerships with Tribal Nations to identify and implement solutions that transcend traditional program boundaries. As part of that commitment, OCC seeks input on the requirements, regulations, and processes for Tribal Nations that administer CCDF. This Request for Information (RFI) specifically seeks public comment on the following topics of the Tribal child care program - CCDF Funding Policies for Tribes, CCDF Administration, Improving Families' Access to Child Care, and Increasing Child Care Supply in Tribal Communities - but input on any aspect of the Tribally administered CCDF program is welcome. OCC will host a Tribal consultation during the RFI public comment period.

**DATES:** To be considered, public comments must be received electronically no later than January 2, 2024.

**ADDRESSES:** Public comments should be submitted online at <https://www.regulations.gov> or by email to [OCC Tribal@acf.hhs.gov](mailto:OCC Tribal@acf.hhs.gov). All submissions received must include the docket number ACF-2023-0004 for "Request for Information: Meeting the Child Care Needs in Tribal Nations." All comments received are a part of the public record and will be posted for public viewing on <https://www.regulations.gov>, without change. That means all personal identifying

information (such as name or address) will be publicly accessible. Please do not submit confidential information, or otherwise sensitive or protected information. We accept anonymous comments. If you wish to remain anonymous, enter “N/A” in the required fields.

**FOR FURTHER INFORMATION CONTACT:** Megan Campbell, Office of Child Care, 202-690-6499. Telecommunications Relay users may dial 711 first. Email inquiries to [megan.campbell@acf.hhs.gov](mailto:megan.campbell@acf.hhs.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

There are approximately half a million Native children under the age of 13 in the United States, and nearly half are below the age of five.<sup>1</sup> In fiscal year (FY) 2023, 265 Tribal Lead Agencies received CCDF grants totaling \$557 million toward Tribal child care. The Child Care and Development Block Grant (CCDBG) Act of 2014 (the Act), 42 U.S.C. 9857 *et seq.*, and the CCDF regulations (45 CFR Part 98), which together govern CCDF, aim to promote families’ financial stability and foster healthy child development by helping families afford child care and improving the quality of child care for all children.

The Act does not explicitly apply most of its provisions to the Tribal program, so with some exceptions and within certain parameters, the Secretary of Health and Human Services (the Secretary) has the authority to determine many of the CCDF requirements for Tribal Lead Agencies. With this RFI, OCC is seeking public comment on whether existing CCDF requirements, regulations, and processes are appropriate for Tribal Nations to implement CCDF in a manner that best meets the needs of the children, families, and child care providers in their communities and that properly recognizes the principals of strong government-to-government relationships and Tribal sovereignty. We seek feedback on whether changes to rules and/or processes are needed to improve implementation of Tribal CCDF programs.

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<sup>1</sup> Smith, L. and Rosen, S. (2022). Righting a wrong: Advancing equity in child care funding for American Indian & Alaska Native families. Washington, DC: Bipartisan Policy Center.  
[https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2022/04/BPC-Tribal-Report\\_RV5.pdf](https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2022/04/BPC-Tribal-Report_RV5.pdf)

We recognize that any changes made to Tribal regulations or other requirements must be made with input and consultation from Tribal Nations and organizations that receive CCDF funding. This RFI is being issued with ACF’s Principles for Working with Federally Recognized Tribes<sup>2</sup> in mind, including the promotion and sustainability of strong government-to-government relationships, Indian self-determination, Tribal sovereignty, and transparency in ACF’s actions as public servants. This RFI is also aligned with President Biden’s 2021 Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans<sup>3</sup>; his Memorandums on Tribal Consultation and Strengthening Nation-to-Nation Relationships<sup>4</sup> and Uniform Standards for Tribal Consultation<sup>5</sup>; and Executive orders on Increasing Access to High-Quality Care and Supporting Caregivers<sup>6</sup>, and Advancing Racial Equity and Support for Underserved Communities Through the Federal Government<sup>7</sup>, and Further Advancing Racial Equity and Support for Underserved Communities through the Federal Government<sup>8</sup>. In the Executive order on Increasing Access to High-Quality Care and Supporting Caregivers, President Biden specifically calls for, “removing barriers and providing the funding needed for Tribal Nations to effectively provide high-quality child care and long-term care”<sup>5</sup> and calls on the Secretary to, “review existing policies to identify opportunities — including among

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<sup>2</sup> Administration for Children and Families (ACF) Principles for Working with Federally Recognized Tribes [https://www.acf.hhs.gov/sites/default/files/documents/revised\\_acf\\_principles\\_032317.pdf?nocache=1490367914#:~:text=ACF%20establishes%20these%20principles%20in,professionalism%2C%20integrity%2C%20and%20stewardship](https://www.acf.hhs.gov/sites/default/files/documents/revised_acf_principles_032317.pdf?nocache=1490367914#:~:text=ACF%20establishes%20these%20principles%20in,professionalism%2C%20integrity%2C%20and%20stewardship)

<sup>3</sup> Executive Order 14049. October 11, 2021. <https://www.govinfo.gov/content/pkg/DCPD-202100841/pdf/DCPD-202100841.pdf>

<sup>4</sup> Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships. January 26, 2021. <https://www.govinfo.gov/content/pkg/DCPD-202100091/pdf/DCPD-202100091.pdf>

<sup>5</sup> Memorandum on Uniform Standards for Tribal Consultation. November 3, 2022. <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/>

<sup>6</sup> Executive Order 14095. April 18, 2023. <https://www.govinfo.gov/content/pkg/DCPD-202300309/pdf/DCPD-202300309.pdf>

<sup>7</sup> Executive Order 13985. January 20, 2021. <https://www.govinfo.gov/content/pkg/DCPD-202100054/pdf/DCPD-202100054.pdf>

<sup>8</sup> Executive Order 14091. February 16, 2023. <https://www.govinfo.gov/content/pkg/FR-2023-02-22/pdf/2023-03779.pdf>

Tribal communities — to increase the capacity of community care entities by providing operational support to these networks of providers.”<sup>9</sup>

### **What We Are Looking for in Public Comments**

Through this RFI, the OCC is seeking input from Tribal leaders, Tribal program administrators, and others who are impacted directly by the Tribal CCDF requirements. We also welcome input from service providers, current federal and non-federal technical assistance providers, national organizations, researchers, philanthropy, families, and community members.

Responses to this RFI will inform ongoing and future efforts to improve the ways in which the OCC administers the CCDF Tribal program, including potential regulatory changes, to meet the needs of children, families, and communities within Tribal Nations. This RFI is for information and planning purposes only and should not be construed as a solicitation for applications or as an obligation on the part of ACF or HHS. We also note that changes in policy requiring revisions to statute or regulations will require further appropriate processes to effectuate, which may entail Congressional action or rulemaking procedures.

We recommend that respondents address the questions listed below, but input on any aspect of the Tribally administered CCDF program is welcome. Commenters do not need to address every question and should focus on those where commenters have relevant expertise or experience. Commenters should identify the question to which they are responding by indicating the corresponding letter and number(s). We request commenters who identify barriers or policies to indicate the source/level (e.g., federal, state, local) of the barrier or policy, as well as the types of child care providers (e.g., centers, family child care homes) that are impacted.

### ***CCDF Funding Policies for Tribes***

#### **A. Triennial Child Count and Service Area**

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<sup>9</sup> Executive Order 14095. April 18, 2023. <https://www.govinfo.gov/content/pkg/DCPD-202300309/pdf/DCPD-202300309.pdf>

OCC seeks public comment on the CCDF rules and regulations related to the triennial child count and defined service area. Every three years as part of the triennial plan submission, Tribal Lead Agencies submit the number of children that will be counted as the basis for funding formulas, as well as their definition of Indian Child and Indian Reservation or Service Area (otherwise referred to as the “child count” (45 CFR 98.81 (b)(4)) to receive CCDF funds. Tribal Lead Agencies have flexibility to determine the methodology and data sources used for their child count. Additional information about these requirements can be found in the Child Count and Tribal Early Learning Initiative (TELI) Program Instructions (CCDF-ACF-PI-2022-03).

Regulations allow Tribal Lead Agencies to include children from other Tribes in their count, provided they are from federally recognized Tribes and there is no duplication in counts across overlapping or neighboring service areas, which are on or near a reservation (except Tribes in Alaska, California, and Oklahoma) (45 CFR 98.80(e)). CCDF requires the service area to be “on or near” a reservation, and OCC has specified through the above-referenced policy guidance that “on or near” refers to a geographic proximity to the borders of a tribe's reservation.

A tribe with fewer than 50 children under age 13 may participate in a consortium of eligible Tribes if the consortium demonstrates authorization from each participating tribe, including a letter for each participating tribe that the consortia can act and receive funding on their behalf (45 CFR 98.80(c)). This demonstration is required initially and every three years.

### **Request for Information:**

#### A1. Child Count

OCC seeks input on whether the current requirements for the triennial child count work well for Tribal Lead Agencies and if there are changes to the child count requirements that would better support the implementation of Tribal CCDF programs. We also request input on what changes to child care rules, guidance, and/or the role of the federal office, if any, would enable a fair and equitable child count process for all Tribal Nations.

#### A2. Consortia

OCC seeks input on the current requirements for Tribal CCDF consortia, including whether there are barriers or challenges for identifying the methods or data sources for consortia child count. We also seek input on the benefits and/or burdens to how Tribes must demonstrate they authorize the consortium to receive funds and act on their behalf.

### A3. Service Area

OCC seeks input on whether the definition or parameters of "service area" enables Tribal Lead Agencies to meet the child care needs for Native families in their area and whether and what changes to the requirements for defining service area would help ensure a fair and equitable process for all Tribal Nations.

## **B. Allocation Sizes**

The preamble of the 2016 CCDF Final Rule established thresholds for the three categories of Tribal Lead Agencies based upon funding allocations, which have remained unchanged: small (less than \$250,000), medium (\$250,000 to \$1 million), or large (more than \$1 million) (FR 67536-6). While all Tribal Lead Agencies are subject to health and safety requirements and quality spending minimums, Tribal Lead Agencies with small allocations operate under a smaller number of CCDF requirements and complete an abbreviated CCDF plan compared to Tribes with medium and large allocation (45 CFR 98.81 & 98.83). These modified requirements are meant to account for implementation and structural variance that arise from a small award size and fewer services. Tribal Lead Agencies with medium and large allocations must meet more requirements, provide direct services, and complete a full CCDF plan.

Annual appropriations for Tribal Lead Agencies increased from \$137 million in FY 2017 to \$557 million in FY2023. While the total amount allotted to Tribes has dramatically increased since the publication of the 2016 Final Rule, the allocation size thresholds have remained the same. We acknowledge that any changes to allocation size thresholds could have significant implications for Tribal Lead Agencies and their programming.

## **Request for Information:**

B. OCC seeks input on whether the current thresholds for Tribes with small, medium, and large allocations and the corresponding requirements are still appropriate or if changes are warranted. OCC is requesting information whether and what changes in tiered requirements for each allocation size would better support the implementation of the CCDF program and better serve the needs of Tribal Nations.

### **C. Tribal CCDF Plan**

Every three years, Tribal Lead Agencies are required to submit a CCDF plan as a condition to receive annual CCDF funds (45 CFR 98.17 & 98.81(a)). Prior to CCDF plan submission, OCC provides a CCDF plan preprint outlining the applicable regulations and requirements with instructions on how to address each plan item or question. OCC also provides training and technical assistance on how to develop and submit the triennial plan.

#### **Request for Information:**

C. OCC seeks feedback on how the Tribal CCDF plan submission supports or interferes with implementation of the CCDF program. Does the three-year plan cycle process support implementation or create barriers or challenges? Is there anything specifically challenging or burdensome about drafting or creating the Tribal CCDF plan? Are changes to the Tribal plan needed to better support Tribal CCDF program administration? If so, how?

### **D. Discretionary Base Amount**

Tribal Lead Agency CCDF allocations are based on a discretionary base amount set by the Secretary, as well as a discretionary and mandatory amount based on the number of children submitted in the child count (45 CFR 98.61(c) & 98.62(b) through (c)). The base amount is not subject to the administrative cost limitations nor the quality expenditure requirement discussed below and can be used on any allowable CCDF expenditure (45 CFR 98.83(h)). The discretionary base amount is not regulatory and was originally established in the preamble to the 1998 CCDF Final Rule (63 FR 39978) and was increased in the preamble to the 2016 Final Rule (81 FR 67544). Beginning in FY 2017, the base amount increased from \$20,000 to \$30,000 to

account for inflation that eroded the value of the base amount since it was originally established in 1998.

**Request for Information:**

D. OCC is seeking input on whether the current base amount for discretionary funds has created barriers, challenges, or worked well for Tribal Lead Agencies. We are interested to know whether a different base amount would better support the implementation of Tribal CCDF programs and whether a change to the discretionary base amount would expand opportunity and access to child care services in Tribal Nations and their communities.

***CCDF Administration***

**E. Early Childhood and Related Systems Coordination**

CCDF Tribal Lead Agencies are required to coordinate services with other Tribal, federal, state, and/or local child care and early childhood development programs with agencies responsible for public health, employment services/workforce development, public education, the Temporary Assistance for Needy Families program (42 U.S.C. 601 et seq.), etc. at a minimum (45 CFR 98.82 (b)). However, Tribes have indicated there are multiple challenges related to coordination of Tribal early childhood services, including conflicting requirements, difficulties in tracking funding separately, and lack of a cohesive vision.

**Request for Information:**

E. OCC seeks input on what barriers interfere with Tribal Lead Agencies coordinating CCDF with other early childhood programs, like Head Start, preschool funds offered through state or local resources, and home visiting, as well as with other related programs like the Individuals with Disabilities Education Act Part C and Part B, Child and Adult Child Care Food Program and the Women, Infants, and Children program in a manner that supports Tribal program goals. OCC is specifically interested in the ways in which Tribes currently or would like to braid, blend, and layer funding from multiple early childhood federal funding streams in



order to create culturally appropriate and high-quality early childhood settings and specific barriers to doing so.

## **F. Spending Requirements**

CCDF regulations includes three types of set-asides for how funds must be spent. First, Tribal Lead Agencies with medium and large allocations must spend at least 70 percent of their discretionary CCDF funds (excepting the base amount) on direct services, which is based on total expenditures after reserving funds for quality and administration (45 CFR 98.50(f)(2) & 98.83(g)). The 70 percent minimum does not apply to Tribes with small allocation, which are not required to spend CCDF on direct services (45 CFR 98.83(f)). This minimum set-aside ensures CCDF is mainly spent on helping parents afford child care, but OCC has heard concerns that it can be a barrier for some Tribal Nations to make needed child care system investments that, if unaddressed, limit families' ability to use child care assistance. Second, all Tribal Lead Agencies have a 15 percent cap on administrative expenditures (45 CFR 98.83(i)). All funds except those received through the discretionary base amount (\$30,000) are subject to this limitation. Third, CCDF requires all Tribal Lead Agencies to spend no less than nine percent of their total CCDF expenditures on quality improvement activities (45 CFR 98.50(b)(1) & 98.83(g)(1)). Tribes with medium and large allocation are required to spend an additional 3 percent on activities to improve the quality and supply of care for infants and toddlers (45 CFR 98.50(b)(2) & 98.83(g)(2)). While any Tribal Lead Agency can spend more than nine percent of their funds on quality activities, quality activities do not count toward direct services.

### **Request for Information:**

#### **F1. Direct Services Minimum**

OCC requests comment on whether the 70 percent direct service spending requirement for discretionary funds creates challenges for Tribal Lead Agencies and if there are alternative policies that would better meet Tribes' child care needs. We also seek feedback on whether any of the spending requirements (for direct services, quality activities, and/or administrative

expenses) inhibit opportunities and access to child care and early learning services in Tribal Nations.

## F2. Administrative Cap

OCC requests comment on whether the 15 percent administrative cap inhibits Tribal implementation of the CCDF program and if so, the changes that would facilitate the Tribal Lead Agency better meeting the purposes of the program.

## F3. Quality Set-Aside

OCC requests comment on any barriers or challenges the quality set-aside may pose to Tribes implementing their child care program.

## **G. Construction and Major Renovation of Child Care Facilities**

With approval from ACF, CCDF Tribal Lead Agencies may use CCDF funds for the construction and/or major renovation of child care facilities (45 CFR 98.84 (a)). Construction or major renovation funds must be set-aside from the Tribal Lead Agency's current grant year's CCDF allocation and must be liquidated by the end of the second fiscal year following the fiscal year the grant is awarded (45 CFR 98.84(e)). This policy provides three years to fully liquidate funds. Funds set aside for construction or major renovation may also pay for a modular unit, including the costs of buying and installing the unit, if the unit is fixed to the land. A Tribal Lead Agency must demonstrate that adequate child care facilities are not otherwise available and that the lack of facilities will inhibit future program operations (45 CFR 98.84(b)). The Tribal Lead Agency must also show that after the construction or renovation is complete, either the level of direct child care services will increase or the quality of child care services will improve.

Tribes may use set-aside funds to construct or renovate a facility that services more than the CCDF program, however, a cost allocation plan that ensures proportionate cost sharing must be in place.

## **Request for Information:**

G. Please describe specific challenges or barriers Tribal Lead Agencies have experienced with the requirements for construction or major renovation. We seek feedback on CCDF rules for prioritizing, planning, developing, and/or building child care facilities. We also specifically seek input on barriers to building a facility that will serve more than the CCDF program, such as facilities jointly funded by Head Start and CCDF.

## **H. Obligation and Liquidation Deadlines**

Tribal Lead Agencies must obligate, or legally commit, all funds by the end of the fiscal year (September 30<sup>th</sup>) following the fiscal year the funds were initially awarded (approximately two years) (45 CFR 98.60(e)(1)). Obligated funds must be liquidated within the next fiscal year (approximately three years) (45 CFR 98.60(e)(2)). Any funds that remain unobligated or unliquidated by these deadlines are returned to the Department of Treasury. Financial information regarding obligated and liquidated funds are reported through the ACF-696T form.<sup>10</sup>

We acknowledge the rapid influx of Tribal funding since 2017, in combination with these deadlines, created a burden for many Tribal Lead Agencies in spending funds within the time allotted. This led to many requests for extension of the obligation and liquidation periods through temporary fiscal waivers – including for COVID supplemental funds, discretionary funds, or construction and major renovation funds – to allow more time to manage and spend down the multiple increased funding streams during a short window of time.

### **Request for Information:**

H. We seek input on whether the current obligation and liquidation deadlines have created barriers or challenges for implementation of CCDF programs by Tribal Lead Agencies.

## **I. Reporting Requirements**

Tribal Lead Agencies that receive CCDF funds are required to submit an aggregate report (ACF-700 Tribal Annual Report<sup>11</sup>) covering overall child care services provided and a financial

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<sup>10</sup> CCDF-ACF-PI-2022-08. November 2, 2022. <https://www.acf.hhs.gov/occ/policy-guidance/ccdf-acf-pi-2022-08>

<sup>11</sup> CCDF-ACF-PI-2022-09. October 31, 2022. <https://www.acf.hhs.gov/occ/policy-guidance/ccdf-acf-pi-2022-09>

report (ACF-696T Financial Reporting Form for Tribal CCDF Lead Agencies<sup>12</sup>) on expenditures issued under CCDF every year (45 CFR 98.65(i) & 98.70(c)). These forms are subject to the Paperwork Reduction Act, which includes designated periods for Tribal Lead Agencies and others to provide public comment. Tribal Lead Agencies will have additional opportunities to comment on any changes to these forms that may be proposed based on responses to the RFI.

**Request for Information:**

I. OCC seeks input on CCDF reporting for Tribal Lead Agencies, including the ACF-700 and/or the ACF-696T forms. Please describe how they may create barriers or challenges for Tribal Lead Agencies and if the current reporting requirements align with Tribal data sovereignty. Please describe recommended changes, including other ways administrative and expenditure data can be collected and reported.

**J. Quality Activities in Tribal Child Care**

Tribal Lead Agencies receive CCDF funds to increase the quality of child care and childhood development programs and are required to report how their funds and policies support quality programming (45 CFR 98.53(a)). Quality activities could include, but are not limited to, training and professional development, improving early learning and development guidelines, or supporting health and safety practices. Tribal Lead Agencies also report how their payment rates to providers support quality, including cultural and linguistic appropriateness (45 CFR 98.81(b)(5)).

**Request for Information:**

J. Please describe the primary drivers of child care quality in Tribal communities or programs. OCC also seeks feedback on any barriers or challenges to improving quality as a result of CCDF program requirements.

**K. Tribal and State Coordination of CCDF Programs**

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<sup>12</sup> CCDF-ACF-PI-2022-08. November 2, 2022. <https://www.acf.hhs.gov/occ/policy-guidance/ccdf-acf-pi-2022-08>

State CCDF programs may sometimes intersect with the administration of Tribal CCDF programs. Therefore, CCDF requires States to be proactive and timely in reaching out to the Tribal officials for collaboration and are required to describe how they consulted, collaborated, and coordinated with Tribes in their State Plans (45 CFR 98.16(e)). The CCDF regulations recognize the need for states to conduct formal, structured consultation with Tribal governments, including Tribal leadership (45 CFR 98.10(f)). Many states and Tribes have consultation policies and procedures in place. Tribal Lead Agencies are subject to health and safety as well as monitoring requirements for providers who receive CCDF funds (45 CFR 98.41(a) & 98.83(d)(2)). They have some flexibility in determining which monitoring requirements should apply to child care providers (45 CFR 98.83(d)(2)). However, any alternative approaches must be approved, and this flexibility cannot be used to bypass these requirements altogether. Rather, Tribal Lead Agencies can introduce strategies that are more culturally appropriate or more financially feasible for Native children, families, and child care providers.

State Lead Agencies are subject to the same health and safety requirements and also must have child care licensing requirements for child care providers (45 CFR 98.40(a)(1)). State Lead Agencies may require child care providers to meet additional health and safety standards or quality levels in order to participate in the CCDF program. Tribal Lead Agencies may use their CCDF funds to pay child care providers regulated by a State Lead Agency rather than requiring a separate set of Tribal health and safety requirements or standards. Many Tribal Lead Agencies pay state-licensed or state-regulated providers with Tribal CCDF funds to serve Tribal children. Tribal Lead Agencies may accept state subsidy payments at their Tribally operated child care centers. In cases where Tribally operated child care centers accept state subsidy payments, State Lead Agencies may require such providers to meet their state-specific health and safety requirements or standards, which may result in the Tribally operated child care center being subject to the State-specific health and safety requirements or their quality improvement

systems. However, state licensing or regulation and quality improvement systems may not be culturally appropriate or relevant for Native children, families, and child care providers.

**Request for Information:**

K. Please describe how state administration of CCDF requirements impact your Tribal Lead Agency's ability to administer your Tribal CCDF program and meet the needs of Native children and families.

***Improving Families' Access to Child Care***

**L. Consumer Education**

All Tribes are exempt from creating a CCDF consumer education website given the administrative cost of building a website and the lack of reliable high-speed internet in some Tribal areas (45 CFR 98.83(d)(1)(i)). However, Tribal Lead Agencies with medium or large allocations are required to meet some of the CCDF consumer education requirements, including maintaining a parental complaint hotline, disseminating certain information to parents, providers, and the general public on child care services, sharing consumer-friendly and easily accessible, provider-specific monitoring reports and provider-specific consumer education statement with a summary of the Tribe's health and safety policies. Tribes with small allocations are exempt from all consumer education requirements.

**Request for Information:**

L. OCC seeks input on the consumer education information requirements for Tribal Lead Agencies. Please describe if the amount of consumer education information that is required for Tribal Lead Agencies creates any barriers or challenges in program administration. OCC also seeks feedback on the most appropriate minimum information about Tribal CCDF programs and eligible providers that should be shared with families and the general public, as well as effective means for communicating the information so that they can make informed decisions. OCC also welcomes feedback from families participating in Tribally-administered child care subsidy

programs on current consumer education resources and if these resources promote transparency and parent choice.

### **M. Eligibility**

Tribal Lead Agencies with small allocations can consider any Native child under age 13 in the service area to be eligible for child care services automatically (referred to as “categorical eligibility”) (45 CFR 98.83(f)(8) & 98.81(b)(1)(i)), and many CCDF Tribal Lead Agencies with small allocations utilize this flexibility.

Tribal Lead Agencies with large or medium allocations are subject to standard eligibility requirements unless the tribe’s median income is below a level established by the Secretary, and therefore to be eligible for CCDF services, children must be under age 13, reside with a family whose income does not exceed 85 percent of the Grantee Median Income (GMI), and reside with parents who are working, attending a job training or educational program (45 CFR 98.81(b)). To use categorical eligibility, Tribal Lead Agencies with large or medium allocations must demonstrate their Tribal Median Income is below 85 percent of State Median Income, and that provision for services is delivered to those with the highest need. Most Tribal Lead Agencies meet this requirement.

### **Request for Information:**

M. Please describe whether current federal eligibility requirements are appropriate for Tribal Lead Agencies and what, if any, changes to current federal eligibility requirements would better support the implementation of Tribal CCDF programs, including coordination with other early care and education programs. Please describe whether changes to the eligibility requirements are needed to expand opportunity and access to child care and early learning services to Tribal Nations and communities.

### ***Increasing Child Care Supply in Tribal Communities***

### **N. Early Childhood Workforce**

ACF's mission is to advance an early childhood sector that meets the developmental needs of, and that creates equitable opportunities for, children and families. This includes supporting systems that attract, prepare, support, and retain a qualified and diverse work force. President Biden's Executive order on Increasing Access to High-Quality Care and Supporting Caregivers<sup>13</sup> also calls for increasing wages and benefits for staff, increasing provider payment rates, and improved access to mental health supports for the workforce. CCDF provides significant flexibility for Tribal Lead Agencies to prioritize CCDF funds for the workforce. OCC has heard from many Tribal Lead Agencies that there are oftentimes internal challenges to increasing CCDF Tribally Operated Center teacher, director, and staff wages and/or in retaining qualified CCDF staff.

**Request for Information:**

N1. Compensation. Please describe specific challenges or barriers that CCDF rules present for Tribal Lead Agencies increasing child care staff wages, benefits, and or provider payment rates. Please describe what changes would better support efforts to support the Tribal child care workforce.

N2. Qualifications. Please provide perspectives on child care workforce qualifications and what makes for an effective workforce. Please describe specific challenges or barriers that CCDF rules present for Tribal Lead Agencies in preparing, supporting, and retaining qualified CCDF staff.

**O. Eligible Child Care Providers**

Eligible child care providers under CCDF include center-based child care providers, family child care providers, or in-home child care providers that are subject to health and safety requirements and monitoring and enforcement procedures (45 CFR 98.2). Relative providers are also eligible if they are 18 years of age or older and provide child care services only to eligible

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<sup>13</sup> Executive Order 14095. April 18, 2023. <https://www.govinfo.gov/content/pkg/DCPD-202300309/pdf/DCPD-202300309.pdf>



children who are – by marriage, blood relationship, or court decree – the grandchild, great grandchild, sibling[s] (if such provider lives in separate residence), niece, or nephew of such provider (45 CFR 98.2).

**Request for Information:**

O. We seek feedback on how the current requirements on eligible providers support Tribal CCDF programs and if they create barriers or challenges for Tribal Lead Agencies. Are there changes in the eligible provider requirements that would better support the implementation of Tribal CCDF programs? Are there ways in which the requirements on eligible providers undermine Tribal sovereignty and self-determination?

**P. Comprehensive Background Checks**

CCDF regulations require Tribes to comply with the same background check provisions as states and territories (45 CFR 98.83(d)(3), but the Act does not provide Tribes the legal authority to conduct all checks, and Tribes face unique challenges directly requesting and accessing certain data. This lack of statutory authority and access to conduct certain checks impacts public safety not only in Tribal communities but across the United States.

**Request for Information:**

P. We are seeking comment to better understand challenges Tribal Nations face to implement the CCDF background check requirements. Please describe challenges Tribal Nations face in the implementation of comprehensive background checks and recommendations for addressing these challenges while ensuring child safety.

**Q. Other Topics**

Please describe any other CCDF Tribal regulations and processes that interfere with Tribal Nations' child care program implementation and/or CCDF policies or regulations not yet addressed in this RFI and proposed solution(s).

Dated: July 24, 2023.

Ruth J. Friedman,

*Director, Office of Child Care.*

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